

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

**JERRY LEWIS DEDRICK,** )  
Petitioner, )  
v. ) CIV-05-1039-R  
**JOSEPH SCIBANA,** )  
Respondent. )

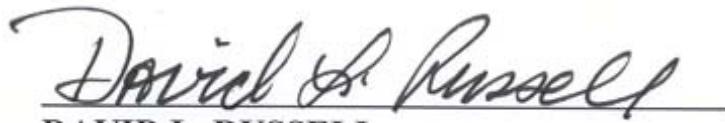
## ORDER

Before the Court is the Report and Recommendation of United States Magistrate Judge Valerie K. Couch entered October 18, 2005. Also before the Court is Petitioner's "Motion to Objection to Report and Recommendation" filed October 25, 2005. Pursuant to 28 U.S.C. § 636(b)(1)(B), the Court has reviewed the Report and Recommendation *de novo* in light of Petitioner's Objection. The authorities cited by Petitioner involved state prisoners and are otherwise distinguishable from the case of Petitioner, who is a federal prisoner. Petitioner has cited no Supreme Court or Tenth Circuit precedent contrary to the Tenth Circuit precedent cited by the Magistrate Judge to the effect that federal prisoners' challenges to the constitutionality of their transfers to administrative segregation, exclusion from prison programs and suspension of privileges must be brought pursuant to *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), rather than under 28 U.S.C. § 2241. *See Report and Recommendation at pp. 3-4, citing Boyce v. Ashcroft*, 251 F.3d 911, 914 (10<sup>th</sup> Cir. 2001), *vacated as moot*, 268 F.3d 953 (10<sup>th</sup> Cir. 2001); *Huerta v. Hawk-Sawyer*, 16 Fed. Appx. 916, 918 (10<sup>th</sup> Cir. 2001) (unpublished op.). The Court agrees

with the conclusions of the Magistrate Judge that Petitioner's claims are not properly raised in this § 2241 action but must be brought in a *Bivens* action and that this case must be summarily dismissed.

In accordance with the foregoing, the Report and Recommendation of the Magistrate Judge is ADOPTED in its entirety, the petition for a writ of habeas corpus herein is summarily DISMISSED and Petitioner's motion for a temporary restraining order is DENIED. Dismissal of this § 2241 petition is without prejudice to Petitioner's refiling as a *Bivens* action following exhaustion of administrative remedies.

**IT IS SO ORDERED this 1<sup>st</sup> day of November, 2005.**



DAVID L. RUSSELL  
UNITED STATES DISTRICT JUDGE